

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

SHAWN SCHIERTS,
Plaintiff,

v.

Case No. 10-C-0657

**CITY OF BROOKFIELD and
BART ENGELKING,**
Defendants.

DECISION AND ORDER

In the present case, the defendants served requests for admission pursuant to Federal Rule of Civil Procedure 36 on the plaintiff. One such request asked plaintiff to admit that he did not suffer any damages as a result of the defendants' actions. Plaintiff's response to this request was due by November 11, 2010, but plaintiff did not respond until November 29, 2010, when he denied the request. By operation of Rule 36, plaintiff's failure to timely deny the request amounted to an admission. Plaintiff now asks that the court permit him to withdraw the admission. He states that his untimely response was caused by a combination of the anxiety he suffers and the fact that he lost his job just prior to when the requests for admission were due. Defendants oppose the motion.

"A court, in its discretion, may permit a party to rescind admissions when doing so better serves the merits of the case and the party who benefits from the admissions (usually by relying on them) is not prejudiced." Banos v. City of Chicago, 398 F.3d 889, 892 (7th Cir. 2005) (citing Fed. R. Civ. P. 36(b)). In the present case, I find that allowing plaintiff to rescind his admission would promote the presentation of this case on the merits, in that plaintiff clearly contends that he has suffered harm as a result of defendants' actions

but would be precluded from proving his damages unless the admission were rescinded. Further, defendants have not pointed to any prejudice that they would suffer if I set aside the admission. Discovery is ongoing and will not close until April 30, 2011, and therefore defendants have amply time to conduct whatever discovery they may need in connection with the withdrawn admissions.

THEREFORE, IT IS ORDERED that plaintiff's motion to withdraw his admission is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 27th day of January, 2011.

/s _____
LYNN ADELMAN
District Judge